

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAIME VARELA and
YESICA WIEGERT, individually and
on behalf of similarly situated
individuals,

Plaintiffs,

-V-

DAVID BENITEZ GONZALES, ANA CRISTINA BENITEZ, INTELLIGENT MEXICAN MARKETING, INC, AND MARKETING AND INVENTORY MANAGEMENT, LLC

Defendants.

Civil No. 3:13-cv-1278

PLAINTIFF'S SECOND MOTION FOR SUBSTITUTED SERVICE OF PROCESS

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

JAIME VARELA and YESICA WIEGERT, Plaintiffs in the above-entitled and numbered cause make this Motion for Substituted Service of Process on Defendants DAVID BENITEZ GONZALES and INTELLIGENT MEXICAN MARKETING, and in support of this Motion respectfully show the following:

I. SUMMARY

Plaintiff has unsuccessfully attempted service on Defendants on four separate occasions and using, at least, one alternate address. Defendant David

Benitez Gonzales is the President and registered agent for Defendant Intelligent Mexican Marketing. In accordance with the Federal and Texas Rules of Civil Procedure, substituted service by leaving a true copy of the summons, with a copy of the complaint with an employee over sixteen years of age at Defendants' location set forth below is warranted. This location is the usual place of business for Intelligent Mexican Marketing, is the address of the registered agent, and where David Benitez Gonzales can probably be found. Therefore, Plaintiffs, respectfully request this Court enter an order allowing substituted service on these Defendants.

II.

TEXAS RULES OF CIVIL PROCEDURE ALLOW SUBSTITUTE SERVICE

The Federal Rules of Civil Procedure allow service by "following state law for serving a summons." Fed. R. Civ. P. 4(e)(1). The Texas Rules of Civil Procedure allows this Court, upon motion supported by affidavit, to authorize service "by leaving a true copy of the [summons], with a copy of the [complaint] attached, with anyone over sixteen years of age at the location specified in such affidavit." Tex. R. Civ. P. 106(b)(1). The affidavit should state "the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted." Tex. R. Civ. P. 106(b).

III.

DEFENDANTS MAINTAIN A USUAL PLACE OF BUSINESS AND CAN PROBABLY BE FOUND AT 1850 W. AIRFILED DRIVE

As the attached affidavit states, Defendants Intelligent Mexican Marketing and David Benitez Gonzales maintain a usual place of business at 1850 W. Airfield

Dr., Suite 100, Dallas TX. *See* Ex. A. As additionally stated in the affidavit, the name and address for the registered agent of Intelligent Mexican Marketing is David Benitez Gonzales at 1850 W. Airfield Dr., Suite 100, Dallas, TX 75261. *See* Ex. A; Ex. B. Furthermore, the affidavit details that despite numerous attempts to serve Defendants and due diligence, including using an alternate address, all attempts have failed. *See* Ex. A. Therefore, Plaintiffs request that Defendants be given notice of this suit if the process server leaves a copy of the summons and complaint with an employee of Intelligent Mexican Marketing over sixteen years of age at 1850 W. Airfield Dr., Suite 100, Dallas TX 75261.

IV.
CONCLUSION

WHEREFORE, Plaintiffs request that this Court order service on Defendants Intelligent Mexican Marketing and David Benitez Gonzales by leaving a copy of the summons and complaint with an employee of Intelligent Mexican Marketing over the age of sixteen years and that a true and correct copy of this Court's Order for Substituted Service be attached to the papers to be served.

Respectfully submitted,

/s/ Colin Walsh
Robert J. Wiley
Texas Bar No. 24013750
Board Certified in Labor and Employment Law
by the Texas Board of Legal Specialization
Colin Walsh
Texas Bar No. 24079538

ROB WILEY, P.C.
1011 San Jacinto Blvd, Ste 401

Austin, TX 78701
Telephone: (512) 271-5527
Facsimile: (512) 287 3084
cwalsh@robwiley.com
ATTORNEYS FOR PLAINTIFF

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAIME VARELA and
YESICA WIEGERT, individually and
on behalf of similarly situated
individuals,

Plaintiffs,

-v-

DAVID BENITEZ GONZALES, ANA
CRISTINA BENITEZ, INTELLIGENT
MEXICAN MARKETING, INC, AND
MARKETING AND INVENTORY
MANAGEMENT, LLC

Defendants.

Civil No. 3:13-cv-1278

AFFIDAVIT OF ROBERT McDougall

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned notary public, on this day personally
appeared Robert McDougall, who after being by me duly sworn on his oath deposed
and stated as follows:

“1. My name is Robert McDougall. I am over twenty-one (21) years of age,
am of sound mind, have never been convicted of a felony crime or a crime involving
moral turpitude, and am otherwise fully competent to make this affidavit. I am not

party to this suit and have no interest in the outcome of the suit. The facts stated within this affidavit are true and correct and within my personal knowledge.

2. I am a process server for Colin Walsh at Rob Wiley, P.C., the attorney of record in this case.

3. I am a properly authorized process server under Rule 103 of the Texas Rules of Civil Procedure.

4. I, Robert McDougall, received the Summons in a Civil Action and Plaintiff's Original Complaint – Class Action on March 28, 2013 at 9:45 am with instructions to serve David Benitez Gonzalez of Intelligent Mexican Marketing, Inc.

5. A search of business records indicates that David Benitez Gonzalez is the president and registered agent for Intelligent Mexican Marketing, Inc. The address listed by the Secretary of State for this registered agent is 1850 W. Airfield Drive, Suite 100, Dallas, Texas 75261. Additionally, business records indicate this same address is a usual place of business for Intelligent Mexican Marketing, Inc. (See exhibits 1-3).

6. On April 1, 2013 at 10:00 am, I, Robert McDougall, arrived at 1850 W. Airfield Drive, Suite 100, Dallas, Texas 75261. I rang the doorbell to the reception area and Oscar Ramirez came to the door. I asked Oscar Ramirez if I could speak with David Benitez Gonzales and he said that he was not there. He gave me a telephone number, 214-505-9286, and told me that it was David Benitez Gonzales' cell phone number. I left my business card and asked him to have David Benitez

Gonzales call me. I immediately called the number given to me and left a message asking for David Benitez Gonzales to call me.

7. On April 4, 2013 at 11:15 am, I Robert McDougall arrived at 1850 W. Airfield Drive, Suite 100, Dallas, Texas 75261. I rang the doorbell several times and no one came to the door.

8. On April 9, 2013 at 2:20 pm, I, Robert McDougall, arrived at 1850 W. Airfield Drive, Suite 100, Dallas, Texas 75261. I rang the doorbell and a man who identified himself as Victor came to the door. He refused to give me his last name. I asked if David Benitez Gonzales was in and he said he was out of town. Victor asked for information about the papers and I told him I could not tell him anything. I handed him my business card and asked him to get David Benitez Gonzales to call me. He then said that he could not accept my card and threw it on the ground outside his door and shut the door.

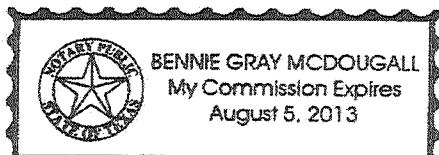
9. On April 13, 2013 at 8:30 am, I, Robert McDougall, arrived at alternate address of 6429 Lavandale, Dallas, Texas 75230. I rang the doorbell and a woman came to the door. She identified herself as Ana Benitez, I asked if David Benitez Gonzales was home and she said no.

10. As of the date of this affidavit, I have not received any return calls in response to me leaving my business card or to the multiple calls where I left messages for David Benitez Gonzales on his cell phone number, 214-505-9286, and his business number, 469-733-1148.

Robert M. McDougall
Robert McDougall
SCH3921
Exp 6-30-2014

THE STATE OF TEXAS §§
COUNTY OF DALLAS §§

SUBSCRIBED AND SWORN TO BEFORE ME by Robert McDougall
person known to me or whose identity I verified on 04-30-2013.



Bennie Gray McDougall

Exhibit 1

Form 401
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions

This space reserved for office use.



**Statement of Change of
Registered Office/Agent**

FILED
In the Office of the
Secretary of State of Texas

MAY 21 2012

Corporations Section

Entity Information

1. The name of the entity is:

INTELLIGENT MEXICAN MARKETING INC.

State the name of the entity as currently shown in the records of the secretary of state.

2. The file number issued to the filing entity by the secretary of state is: 0801430741

3. The name of the registered agent as currently shown on the records of the secretary of state is:

DAVID BENITEZ GONZALEZ

Registered Agent Name

The address of the registered office as currently shown on the records of the secretary of state is:

<u>1210 AVE. S</u>	<u>GRAND PRAIRIE</u>	<u>TX</u>	<u>75050</u>
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Change to Registered Agent/Registered Office

4. The certificate of formation or registration is modified to change the registered agent and/or office of the filing entity as follows:

Registered Agent Change

(Complete either A or B, but not both. Also complete C if the address has changed.)

A. The new registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The new registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>
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Registered Office Change

C. The business address of the registered agent and the registered office address is changed to:

<u>1850 W. AIRFIELD DRIVE, SUITE 100</u>	<u>DALLAS</u>	<u>TX</u>	<u>75261</u>
<i>Street Address (No P.O. Box)</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

RECEIVED

4

MAY 21 2012

Secretary of State

Statement of Approval

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

Effectiveness of Filing (Select either A, B, or C.)

A. This document becomes effective when the document is filed by the secretary of state.

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

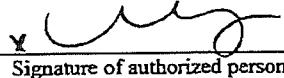
C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 05/15/2012



Signature of authorized person

Marcela Melo / Financial Mgr.
Printed or typed name of authorized person (see instructions)

Exhibit 2

Case 3:13-cv-01278-R Document 10 Filed 04/30/13 Page 14 of 19 PageID 51

TEXAS SECRETARY OF STATE**JOHN STEEN**[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

Filing Number: 801430741 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: May 23, 2011 **Entity Status:** In existence
Formation Date: April 26, 2007
Tax ID: 32030943040
Duration: Perpetual

Name: Intelligent Mexican Marketing Inc.
Address: P.O. BOX 610285
DALLAS, TX 75261-0285 USA

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
Name David Benitez Gonzalez		Address 1850 W Airfield Drive, Suite 100 Dallas, TX 75261 USA			Inactive Date

[Order](#)[Return to Search](#)**Instructions:**

- To place an order for additional information about a filing press the 'Order' button.

Exhibit 3

03/30/2012

Direct
Deposit
DATE
CHECK NO.

PAY TO THE
ORDER OF

AMOUNT

VOID THIS IS NOT A CHECK.....

BANK OF AMERICA
PAYABLE IF DESIRED AT:
ALL BANK OF AMERICA BANKS

****NON-NEGOTIABLE****

AUTHORIZED SIGNATURE(S)

TO VERIFY AUTHENTICITY OF THIS DOCUMENT THE BACK CONTAINS HEAT SENSITIVE INK THAT CHANGES FROM BLACK TO CLEAR AND ALSO CONTAINS AN ARTIFICIAL WATERMARK WHICH CAN BE VIEWED WHEN HELD AT AN ANGLE

Exhibit B

United States District Court
For the
Northern District of Texas

JAIME VARELA et al
Plaintiff

v.

CIVIL ACTION NO. 3:13-cv-01278-B

DAVID BENITEZ GONZALES et al
Defendant

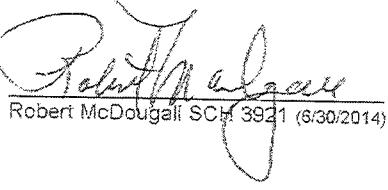
AFFIDAVIT OF DUE DILIGENCE

I, Robert McDougall, being duly sworn, depose and say, I have been duly authorized by the Supreme Court of Texas to serve Citations and other Notices as well as make service of the document(s) to the above referenced individual at the following dates and times.

Date Received: March 28, 2013 at 9:45 AM
Document(s): Summons in a Civil Action and Plaintiff's Original Complaint – Class Action
Deliver to: Intelligent Mexican Marketing, Inc. by delivering to its Registered Agent David Benitez
Gonzales
1850 W. Airfield Drive
Suite 100
Dallas, Texas 75261

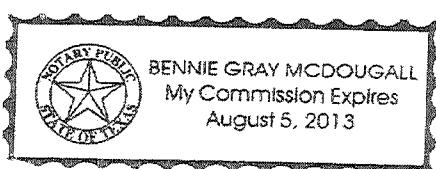
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2. On April 4, 2013 at 11:15 AM, I Robert McDougall arrived at 1850 W. Airfield Drive, Suite 100, Dallas, Texas 75261. I rang the doorbell several times and no one came to the door.
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4. On April 13, 2013 at 8:30 AM, I Robert McDougall arrived at alternate address of 6429 Lavandale, Dallas, Texas 75230. I rang the doorbell and a woman came to the door. She identified herself as Ana Benitez, I asked if David Benitez was home and she said no.
5. As of the date of this Affidavit, I have not received any return calls in response to me leaving my business card or to the multiple calls where I left messages for David Benitez on his cell phone number 214-505-9286 and his business number 469-733-1148.

I am of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated. I am an adult over the age of 18 years of age and I am not a party to this suit and have no interest in the outcome of the suit. I have never been convicted of any felony or crime involving moral turpitude and am competent to make this oath. I am able to perform the service of citation, summons, and notice or subpoena promptly and correctly pursuant to the Texas Rules of Civil Procedure, Rule 103. Under penalties of perjury, I declare that I have read the foregoing Return of Service and that the facts stated in it are true and correct and am within my personal knowledge.


Robert McDougall SCP 3921 (6/30/2014)


Date

State of Texas
Subscribed and sworn to before me, a notary public, on April 20, 2013.




Notary Public
Collin County, Texas

United States District Court
For the
Northern District of Texas

JAIME VARELA et al
Plaintiff

v.

CIVIL ACTION NO. 3:13-cv-01278-B

DAVID BENITEZ GONZALES et al
Defendant

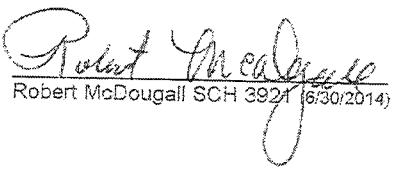
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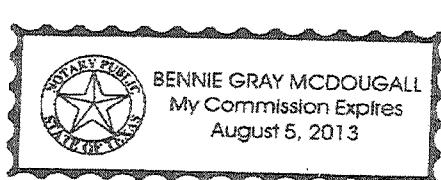

Robert McDougall SCH 3921 (6/30/2014)

Date

4-20-2013

State of Texas

Subscribed and sworn to before me, a notary public, on April 20, 2013.




Notary Public
Collin County, Texas